HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b

Description of the case.

W.P. S/S No. 233/2006

Poonam Devi

vs

State of Uttaranchal

Approved for reporting

_____

~~Not approved for reporting~~

Date of decision 28-2-2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Civil Writ Petition No. 233 of 2006(S/S)

Poonam Devi, W/o Late Bhagwat Prasad, R/o P. W. D. Colony, Ranikhet.

.... Petitioner.

Versus

1. State of Uttaranchal through its Principal Secretary, Public Works Department, Uttaranchal, Dehradun.
2. Engineer-in-chief, Public Works Department, Uttaranchal Dehradun.
3. Executive Engineer, Provincial Division, Public Works Department, Ranikhet District Almora.

....
Respondents.

Sri Siddhartha Bisht , learned counsel for the petitioner.
Learned Standing counsel for respondents.

HON'BLE RAJESH TANDON.J.
28.02.2006.

Heard Sri Siddhartha Bisht, learned counsel for the petitioner and learned Standing counsel for the respondents. Both the parties have submitted that the writ petition may be disposed of at the admission stage.

By the present writ petition the petitioner has prayed for a writ of mandamus directing the respondents to appoint the petitioner on the

compassionate ground under Dying in Harness Rules according to her qualification.

Briefly stated, the husband of the petitioner was appointed as Watchman in the Public Works Department on 1-3-1977 as a Daily Wager and after rendering three or four years service in the Department, the husband of the petitioner was appointed in the work charge establishment. The husband of the petitioner died during the service on 25-2-1995. After the death of the petitioner's husband, the petitioner has moved an application before Executive Engineer, Provincial Division, Ranikhet, District Almora for the release of the amount of Group Insurance of the deceased. The same has also not been released in favour of the petitioner.

However, the petitioner has made a representation to respondent no. 3 on 10-3-1995 for the appointment on the compassionate ground under the Dying in Harness Rules. The respondent no.3 vide order dated 29-3-1995 has refused to permit the petitioner for consideration under the Dying in Harness

Rules. Further representation has been made on 19-12-2005 but neither any pension has been released nor any retiral benefits were given to the petitioner.

The petitioner filed the representation for appointment under Dying in Harness Rules the said representation is lying with the department.

Rule 5 of the U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 provides as under:

"5[Recruitment of a member of the family fo the deceased] [Subs. By Noti.6/XII/73-Kak-2-99, dated 20th January, 1999, published in U.P. Gazette (Extra) Part-4 section (Ka) dated 20th January, 1999].

(1) *In case a Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government servant is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government, on member of his family*

who is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government shall on making an application for the purposes, be given a suitable employment in Government service on a post except the post which is within the purview of the Uttar Pradesh.

Public Service Commission, in relaxation of the normal recruitment rules if such person-

(i) *fulfils the educational qualification prescribed for the post,*

(ii) *is otherwise qualified for Government service, and*

(iii) *makes the application for employment within five years from the date of the death of the Government Servant:*

Provided that where the State Government is satisfied that the time limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the

requirement as it may consider necessary for dealing with the case in a just and equitable manner.

(2) As far as possible, such an employment should be given in the same department in which the deceased Government Servant was employed prior to his death.

(2) *[Ins.by Noti. No. 6/12-73-ka-2-2001, dated 12th October, 2001 [Vide U.P. Recruitment of Dependants of Government Servants Dying in Harness (sixth Amendment) Rules 2001 (w.e.f. 12-10-2001] Each appointment under sub-rule (1) should be under the condition that the person appointed under sub-rule (1) shall upkeep those other family members of the deceased Government Servant who are incapable for their own maintenance and were dependent of the above said deceased Government servant immediately before his death."*

In the case of ***Smt. Sushma Gosain and others Vs. Union of India and others, 1989 (4) SCC, 468.*** *The Apex Court has held as under: -*

" We consider that it must be stated unequivocally that in all claims for appointment on compassionated grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earned in the family. Such appointment should therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.

In the result, we allow the appeal and in reversal of the order of the High Court, we direct respondent no.2 to appoint –

"Sushma Gosain appellant in the post to which she has already qualified. We further direct that she shall be appointed in an appropriate place in Delhi itself. The appointment shall be made within three weeks from today."

In Santosh Kumar Mishra Vs. State of U.P. (2202) 1 UPLBEC 337. It has been held as under:-

"Learned counsel for the petitioner has placed reliance upon the case of Raj Narain Prasad (Supra), for stressing his submission that the petitioner's father would be deemed to have been a regular Government servant in view of the fact that his appointment has been convert into work charge employee in pursuance of the scheme approved by the Apex Court. He further submitted that in view of the decision rendered in the case of Smt. Pushp Lata Dixit vs. Madhyamik Shiksha Parishad and others, reported in 1991 (18) ALR 591,the petitioner is entitled for getting the appointment. In this case, the husband of Smt. Pushp Lata was working as a Paid Apprentice. The plea that he was not a regular employee although he had been working in the department for the last 17 years was not entitled for appointment under Dying in Harness Rule was rejected by the court and the directions were issued to accommodate the petitioner (Smt. Pushp Lata) according to her qualifications relying upon this case,

the writ petition filed by Smt. Maya Devi Vs State of U.P. and others, reported in1998 (79) FLR 608, was also allowed in which the High Court found that the petitioner's husband in that case has satisfactorily worked for about 10 years until his death and though he may be a daily wager, the petitioner can be accommodated on compassionate grounds under Dying in Harness Rules. In the case of Smt. Saroj Devi Vs State of U.P. and others, reported in 1999 (3) ESC 2187 (All):1 UPLBEC (Alld) (Sum) 15, the benefit was given to the temporary appoint as he was working against a substantive vacancy."

"The Apex Court was considering the scheme and the status of a work charge employee even after being confirmed it has been held that a work charge employee after confirmation does not cease to be a work charge employee and he continues to be a work charge employee. The question of regularization against a regular vacancy was not in issue before the Apex Court. No rule, law of any Government order has been brought to the notice of this court by the State to indicate that any terminal benefits have been provided to the work charge employee who have to

their credit a considerable period of service and even in cases after very longer period of service, they retire as such. Even no provision for confirmation of a work charge employee as a work charge employee is available in the State of Uttar Pradesh nor any such provision has been shown by the learned State counsel despite being specifically asked for".

"It may also be taken note of that if daily wager or a work charge employee is engaged against a particular duty or post, and that work is of perennial nature, the presumption would be that such an employee would be entitled for being treated to have been continuing against a regular vacancy".

"It is also not disputed that appointments of such nature have already been given by the department earlier and the respondents State has not been able to indicate as to why the same benefit has not been given to the petitioner".

In Jagdish Prasad Vs. State of Bihar and another 1996 1SCC 301, it has been held as under:

"The very object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress

caused to the family by sudden demise of the earning member of the family."

Considering the facts and circumstances of the present case as will appear from the order impugned which has been passed that the petitioner has been treated to be a work charged employee and, therefore, the benefit of Dying in Harness Rules has not been extended to the petitioner. The representations of the petitioner are still pending.

It is well settled that the compassionate appointment under Dying in Harness Rule can be extended even to a daily wager. A perusal of the record of the writ petition shows that the petitioner has not been paid the emoluments which are due to the petitioner, towards retiral benefits which the petitioner is demanding from time by way of representations.

A writ of mandamus is issued directing the respondents to release the entire retiral benefits within a period of 6 weeks on the application filed by the petitioner in this regard. Further the respondent no.1 is directed to reconsider the compassionate

appointment of the petitioner in accordance with the rules framed under the Dying in Harness Rules.

Any order passed by the department shall be subject to the final order passed on the representation of the petitioner which the petitioner may file within 10 days and the respondents are directed to dispose of the same within a period of six weeks from the filing of the certified copy of the order.

Subject to aforesaid observations, the writ petition is disposed of. No order as to costs.

28.02.2006.

Negi. (**Rajesh Tandon. J)**